

BRAD J. HAYS

IBLA 77-313

Decided August 5, 1977

Appeal from decision of the Idaho State Office, Bureau of Land Management requiring additional advance rental for noncompetitive oil and gas leases I 12839, I 12840, I 12842, I 12843, I 12844, I 12845, I 12846.

Affirmed.

1. Oil and Gas Leases: Applications: Generally--Oil and Gas Leases:
Noncompetitive Leases--Oil and Gas Leases: Rentals

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, such increased rate is applicable to all leases issued subsequent to that date, including leases issued pursuant to over the counter filing procedures, even through the lease offers where submitted prior to the effective date of the increase.

APPEARANCES: Brad J. Hays, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

This is an appeal from Notices of Rental Due dated April 4, 1977, which the Idaho State Office, Bureau of Land Management (BLM) issued to appellant Brad J. Hays in connection with his application for Oil and Gas Leases I 12839, I 12840, I 12842, I 128143, I 12844, I 12845, and I 12846. The applications here at issue were filed by Hays in the Idaho State Office, BLM, on December 29, 1976, and he states on appeal that he was aware at the time of filing that the Secretary of the Interior had published proposed amendments to 43 CFR 3100 et seq. which would increase the applicable rental rate from 50 cents to \$1 per acre per annum, the change to be effective

July 1, 1976. 1/ Hays contends, however, that, since the Secretary had taken no action to put the proposed rental increased into effect prior to December 29, 1976, when he (Hays) filed the above described application, he, "had every right to believe that after such long delay that said Secretary would re-publish the said proposed rules to amend if he intended to go forward with same." Hays argues, further, that the rental increase, as implemented, is "unfair to the Public" and that the regulation "was not published 30 days prior to its effective date as required by 5 U.S.C. § 553(d)."

On January 5, 1977, the regulations in 43 CFR 3103.3-2 were changed to increase the rental on all noncompetitive leases from 50 cents per acre or fraction thereof, to \$1 per acre or fraction thereof for all leases issued on or after February 1, 1977. 42 F.R. 1032. Since appellant's lease could not be issued before that date, he was advised by the BLM of the increased rental requirement and requested to submit the additional rental.

The questions raised by this appeal have been reviewed by this Board in a series of recent decisions involving other appeals from decisions requiring additional rental payments under the amended 43 CFR 3103.3-2. See, e.g., William C. Kirkwood, 31 IBLA 178 (1977); Milton J. Lebsack, 29 IBLA 316 (1977); Raymond N. Joeckel, 29 IBLA 170 (1977); These decisions all hold that leases issued after February 1, 1977, must be at the increased rental rate of \$1 per acre as provided in the amended 43 CFR 3103.3-2. As these cases note, the Secretary of the Interior, in considering the manner in which the increased rental rate should be applied to pending lease applications, wrote that,

Although it might appear that appellants for oil and gas leases pending prior to February 1, 1977 have been treated unfairly under the Amended Regulations, it is important to note that there is an established precedent in the Department, reinforced by Court decisions, which dictates that no rights or responsibilities attach to a lease application until the lease is actually issued. 2/

Applicants for noncompetitive leases are generally deemed to have notice of Department precedents such as the above, and appellant Hays admits that he was aware, when he filed his lease offer, of the

1/ Appellant's Statement of Reasons, P. 1.

2/ Excerpt from letter of February 1, 1977, by Secretary Cecil D. Andrus to United States Senators Mike Gravel, James McClure, Paul Laxalt, Orrin Hatch, Malcolm Wallop, John Melcher, Jake Garn and Howard Cannon.

lease offer, of the Department's intention to increase the rental rate on noncompetitive oil and gas leases. Hay's contentions are to the contrary, there is not even an appearance of unfairness here. His claim that the revised regulation was not published 30 days prior to its effective date is of little moment, moreover, in that the BLM action of which he complains was taken some 3 months after the revised regulation was published. Thus, for the reasons stated in Joeckel, supra, the appellant was properly required to pay an annual rental of \$1 per acre.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the judgment appealed from is affirmed.

Douglas E. Henriques

Administrative Judge

We concur:

Anne Poindexter Lewis
Administrative Judge

Frederick Fishman
Administrative Judge

